



Dan Skopec
Acting Secretary
Cal/EPA



Department of Toxic Substances Control

Maureen F. Gorsen, Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Arnold Schwarzenegger
Governor

June 5, 2006

Mr. Dale Ellis
Assistant Director
Monterey County Planning and Building Inspection
168 West Abisal Street, 2nd Floor
Salinas, California 93901

LAND USE RESTRICTIONS RECORDED, PARCELS E29a, E29b.1, E31a, E31b, E31c, and E36 (also know as MRS-DRO.1, MRS-DRO.2 and a portion of MRS-43), FORMER FORT ORD, CALIFORNIA

Dear Mr. Ellis:

Pursuant to Health and Safety Code (HSC), Division 20, Section 25220(d), the Department of Toxic Substances Control (DTSC) and the Regional Water Quality Control Board (RWQCB) are notifying the local planning and building department that land use restrictions have been recorded for the subject properties. A copy of the Land Use Covenant (LUC) containing the land use restrictions is enclosed.

HSC, Section 25220(d) requires that your agency file this recorded LUC in the property files of the city, county, or regional council of government. The following prohibitions and restrictions are further described in the attached LUC:

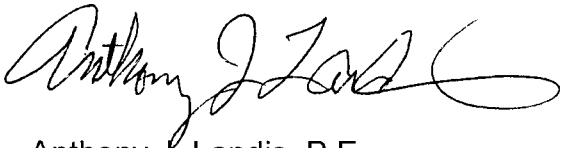
- (1) Prohibits residential use and other sensitive uses including hospitals, public or private schools, day cares except in limited circumstances,
- (2) Prohibits soil disturbance (except as allowed by DTSC), activities in violation of the Del Rey Oaks Agreement, and activities in violation of the Del Rey Oaks Ordinance including modifications, and
- (3) Provides for reasonable right of access to DTSC, its contractor and agents, for inspection, monitoring, testing sampling and other activities consistent with the purpose of this covenant.

Mr. Dale Ellis
June 5, 2006
Page 2

Also enclosed for your information is a DTSC fact sheet which more clearly explains the LUC process. Please refer any person requesting an activity which is prohibited in the LUCs to DTSC and RWQCB to apply for a variance of the land use restrictions, as appropriate.

If you have any questions, please contact Ms. Theresa McGarry, at (916) 255-3664.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony J. Landis", with a stylized flourish at the end.

Anthony J. Landis, P.E.
Chief
Northern California Operations
Office of Military Facilities

Enclosures

cc: Ms. Linda Rotharmel
Administrative Secretary
Monterey County Planning and Building Inspection
168 West Abisal Street, 2nd Floor
Salinas, California 93901

Ms. Gail Youngblood
Department of the Army
Environmental and Natural Resources
Post Office Box 5004
Presidio of Monterey, California 93944-5004

Mr. Michael Houlemard, Jr.
Fort Ord Reuse Authority
100 12th Street, Building 2880
Marina, California 93933

Mr. Dale Ellis
June 5, 2006
Page 3

cc: Mr. Martin Hausladen
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Mr. Grant Himebaugh
Regional Water Quality Control Board
Central Coast Division
81 Higuera Street, Suite 200
San Luis Obispo, California 93401-5414

Ms. Theresa McGarry
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive, Suite 200
Sacramento, California 95826-3200

Mr. Dale Ellis
June 5, 2006
Page 4

bcc: Mr. Bonnie Wolstoncroft
Legal Counsel

Mr. Roman Racca
Office of Military Facilities

RECORDING REQUESTED BY:
U. S. Army Corps of Engineers
Real Estate Division, ATTN: CESP-K-RE-MC
1325 J Street
Sacramento, California 95814-2922

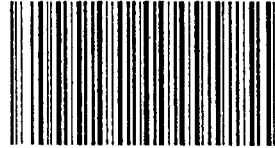
Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Stewart Title

CRMARIA
12/28/2005
8:00:00

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California Region
Office of Military Facilities
ATTN: Anthony J. Landis, Chief
8800 Cal Center Drive
Sacramento, California 95826

DOCUMENT: 2005135588



Titles: 1/ Pages: 50

Fees.....
Taxes.....
Other.....
AMT PAID

(Space Above This Line For Recorder's Use Only)

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

Re: A portion of the former Fort Ord known as Parcels E29a, E29b.1, E31a, E31b, E31c and E36 (also known as MRS-DRO.1, MRS-DRO.2, and a portion of MRS-43).

This Covenant and Agreement (hereinafter "Covenant") is made by and between the United States of America acting by and through the Department of the Army (also referred to herein as the "Covenantor"), the current owner of the herein described real Property located in the City of Del Rey Oaks, County of Monterey, State of California, shown on Exhibit A and described in Exhibit B, attached hereto and incorporated herein by this reference (the "Property"), and the State of California acting by and through the California Department of Toxic Substances Control ("Department").

The United States Environmental Protection Agency (U.S. EPA) placed Fort Ord on the National Priorities List (Superfund) in 1990. All of the former Fort Ord facility is subject to the requirements of the Federal Comprehensive Environmental Compensation and Liability Act ("CERCLA"). The entire Property is undergoing the CERCLA remediation process, which will not be completed prior to transfer of the Property. Because the Covenantor intends to transfer this Property to the Fort Ord Reuse Authority ("FORA") prior to the end of the CERCLA remediation process and FORA has agreed to receive the Property under those conditions, such transfer must be pursuant to the CERCLA Section 120(h)(3) "early transfer process". The Department and the Covenantor also wish to expedite the transfer of this Property to FORA for transfer to the City of Del Rey Oaks (Del Rey Oaks) pursuant to the "early transfer" process.

As part of the "early transfer," the Covenantor has prepared a Finding of Suitability for Early Transfer ("FOSET"), which specifically provides that the Property is suitable for early transfer for the intended use of a resort hotel and golf course, commercial/retail facilities, offices and associated infrastructure.

Pursuant to California Civil Code section 1471(c), the Department has determined this Covenant is reasonably necessary to protect present or future human health, safety or the environment as a result of the presence of hazardous materials, as defined in the California Health and Safety Code ("H&SC") section 25260(d).

The Covenantor intends to transfer the Property to FORA and recognizes that FORA will transfer the Property to Del Rey Oaks. As a part of the transfer to FORA, the Covenantor will impose deed restrictions on the Property, which will be similar to the restrictions contained in this Covenant.

The Covenantor and the Department, collectively referred to as the "Parties," hereby agree the use of the Property will be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01 The Property, totaling approximately 324 acres, is more particularly depicted in Exhibit A and described in Exhibit B. The Property is located on the former Fort Ord, California. Fort Ord was selected for closure in 1991, and property disposal actions are governed by provisions of Public Law 101-510, the Base Realignment and Closure Act of 1990, as amended.

1.02 The U.S. Army Corps of Engineers' Engineering Evaluation/Cost Analysis Phase I, Former Fort Ord, Monterey County, California, September 1997, includes additional details of the identification of the range and actions taken to date to detect and render safe munitions and explosives of concern ("MEC") (previously known as ordnance and explosives ("OE") and unexploded ordnance ("UXO")) found on the Property. (Note: MEC are specific categories of military munitions that may pose unique explosive safety risks. This definition includes UXO but does not include small arms ammunition.)

1.03 Portions of parcels E29a and E29b.1 were part of the Impact Area (previously known as the Multi-Range Area ("MRA")). Parcels E29a and E29b.1 include portions of former Ranges 24, 25 and 26, which were used for antitank training, small arms training and machine gun training, respectively. Parcels E31a, E31b, E31c and E36 were reportedly used as a backstop for rifle grenades and shoulder launched projectiles in the early 1940's.

The Covenantor has completed munitions response (MR) actions on the Property. The Army performed a series of MR actions on the Property from 1998 through 2003. The clearance effort has been completed to the level of appropriate technology and the Army's standard, except for portions of parcels E29a and E29b.1 (within an "11 grid area" in the Range 26 berm area). The 11 grid area is shown and described in Exhibit C. Within the 11 grid area, the Army will provide construction support during intrusive work operations that exceed a depth of 4 feet. There remains a potential that remnant

MEC still exists on the Property. The Covenantor is conducting a munitions response remedial investigation and feasibility study ("MR RI/FS") at the former Fort Ord. The MR RI/FS is not yet complete; however, early transfer is essential to moving forward with reuse of the Property.

1.04 Portions of former Ranges 24, 25 and 26 are within Parcel E29a as shown on Plate 2-Attachment 3 of the FOSET. Based on the results of sampling and characterization activities conducted at these ranges for chemical contamination in soil, it was determined that remediation was warranted at Ranges 24 and 25 only. Remedial action was not required at Range 26. The Army has performed excavation and removal of soil containing accumulated spent ammunition and residual lead at Ranges 24 and 25. This cleanup achieved an average lead level of less than 35 parts per million, which is below the State of California's approved level appropriate for unrestricted use.

1.05 Some portions of the surface and subsurface soils of the Property may contain MEC. The Department considers MEC to be a hazardous material as defined in Health and Safety Code section 25260.

1.06 On December 2, 2003, Del Rey Oaks adopted an ordinance entitled "Digging and Excavation on the Former Fort Ord" (hereinafter "Excavation Ordinance") that addresses the potential MEC risk by requiring permits for certain excavation activities. The Excavation Ordinance requires that the Safety Alert – Ordnance and Explosives at Former Fort Ord ("Safety Alert"), attached as Exhibit A thereto, be distributed to those persons who may be disturbing the soil at the Property. A copy of the ordinance is attached to this Covenant as Exhibit D.

1.07 The Covenantor has issued a FOSET dated April 2004, as required to permit transfer of the Property prior to: a) the Army making the covenant that all remedial action has been completed, b) completion of the MR RI/FS and c) a final assessment of the adequacy of any interim response action. This type of transfer is subject to the requirements of Section 120(h)(3)(C) of CERCLA and requires a determination by the Administrator of the U.S. EPA, with the concurrence of the state Governor, that the Property is suitable for transfer. The FOSET indicates the intended reuse of the Property is for a resort hotel and golf course, commercial/retail facilities, offices and associated infrastructure.

1.08 CERCLA Section 120(h)(3)(A)(ii)(I) requires a separate deed covenant from the Covenantor warranting all remedial action necessary to protect human health and the environment, with respect to any substances remaining on the Property, has been taken before the date of the transfer. The required covenant may be deferred when the deed or other agreements contain response action assurances, as specified in CERCLA Section 120(h)(3)(C)(ii)(I-IV), that: 1) ensure the Property is suitable for the use intended by the transferee, 2) use restrictions are in place to ensure the protection of human health and the environment, 3) use restrictions will also ensure that transfer will not disrupt remedial activities, and 4) the deed or other agreements also contain an assurance from the Army that it will request adequate funds to address schedules for

investigation and completion of all actions necessary to support the subsequent issuance of the required CERCLA 120(h)(3)(A)(ii)(I) covenant.

1.09 The Department, Del Rey Oaks and FORA have entered into an Agreement, Del Rey Oaks Former Fort Ord Resort Property (Exhibit C), dated September 9, 2004, 2004 ("Department – Del Rey Oaks Agreement"). The Department – Del Rey Oaks Agreement specifies construction support and OE education and safety measures that must occur at the Property. Generally, the Department – Del Rey Oaks Agreement prohibits disturbance of more than 10 cubic yards of soil at the Property unless specified measures are taken.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" means the State of California by and through the California Department of Toxic Substances Control and includes any successor agencies.

2.02 U.S. EPA. "US EPA" means the United States Environmental Protection Agency.

2.03 Covenantor. "Covenantor" shall mean the United States of America acting through the Department of the Army.

2.04 Owner. "Owner" means the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

2.05 Occupant. "Occupant" shall mean Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property after the Covenantor has conveyed the Property.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Health and Safety Code section 25222.1 and 25355.5(a) (1) (c), and Civil Code section 1471, (b) inures to the benefit of the Department and passes with each and every portion of the Property, (c) is for the benefit of and is enforceable by, the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding Upon Owners and Occupants. Pursuant to Health and Safety Code section 25222.1 and 25355.5(a) (1) (C) and Civil Code section 1471, this Covenant binds all Owners and Occupants of the land, their heirs, successors, and assignees, and their agents, employees, and lessees. Pursuant to Civil Code section 1471(b), all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department.

3.03 Written Notice of Presence of MEC. Prior to the sale, lease, or sublease of the Property, or any portion thereof; or the execution of a license or easement on the Property, the owner, lessor, or sub-lessor shall give the buyer, lessee, or sub-lessee written notice that there is potential for the presence of MEC in the soil of the Property. This written notice shall include the Safety Alert. Written notice is not required for hotel guests, short term rentals and leases, liens and other non-possessory encumbrances for those who will have minimal potential for disturbing the soil. Such notice shall include a statement summarizing the MR action performed on the Property.

3.04 Accompaniment to Deeds and Leases. This Covenant shall accompany all deeds and leases for any portion of the Property, except those short-term rentals and leases, liens and other non-possessory encumbrances for those who will have minimal potential for disturbing the soil.

3.05 Conveyance of Property. The immediate past Owner shall notify the Department no later than thirty (30) days after executing any document conveying any ownership interest in the Property (excluding short-term rentals and leases, liens, and other non-possessory encumbrances for those who will have minimal potential for disturbing the soil). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any proposed conveyance; except as otherwise provided by law, by administrative order or by a specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.01 Prohibited Uses. As set forth above, the FOSET has found the Property is suitable for early transfer for the intended use of a resort hotel and golf course, commercial/retail facilities, offices and associated infrastructure.

(A) Based on the above and continuing until this Covenant is terminated or modified pursuant to paragraph (B) below or paragraphs 6.01 or 6.02 herein, the Property shall not be used for any of the following purposes:

(1) A residence, including any condominium, mobile home or factory built housing, constructed or installed for residential habitation. Not included in the term "residence" are a hotel and related facilities that are typically ancillary to a

hotel, and timeshares or similar units with limited duration occupancy, provided they do not include landscaping maintained by the occupants thereof;

- (2) A hospital (other than a veterinary hospital);
- (3) A public or private school for persons under the age of 21; and
- (4) A day care center for children. The Property may be used for a daycare center for children if such daycare center meets the following requirements:
 - (a) No bare soil.
 - (b) No gardens.
 - (c) Ground surfaces are covered with continuous lawn or hard surfaces such as concrete.
 - (d) The daycare center is located within the area of resort buildings.
 - (e) Landscaping is maintained by personnel who have had the MEC recognition training described in Section 2.1.1 of the Department - Del Rey Oaks Agreement.

(B) Notwithstanding paragraph (A) above, once the warranty required by CERCLA 120(h)(3)(C)(iii) and referenced in paragraph 1.08 above is issued, the Owner may apply pursuant to Paragraph 6.02 to have the above-described prohibitions of use terminated if the Department, with an opportunity to comment by U.S. EPA and the Covenantor, determines the Property, or if only a portion of the Property is affected, has been cleared pursuant to the Department's then accepted standards for clearance for residential use. The Department shall, under the appropriate circumstances, review and consider the application request for said termination. Upon such termination, this Covenant shall be appropriately modified.

(C) At any time, the Owner may apply to the Department, pursuant to paragraph 6.01, for a variance to change the allowed land use on all or part of the Property to include residential. This application, subject to acceptance by the Department, with an opportunity to comment by US EPA and the Covenantor, shall be accompanied by a description detailing the work to be performed to assure all or part of the property is suitable for residential use.

4.02 Soil Management Requirements. The following activities are prohibited on the Property without the prior written approval of the Department.

(A) Soil disturbance, except as allowed pursuant to the Department – Del Rey Oaks Agreement (Exhibit C) and the Excavation Ordinance (Exhibit D).

(B) Activities in violation of the Department – Del Rey Oaks Agreement, which contains restrictions and requirements.

(C) Activities in violation of the Del Rey Oaks Excavation Ordinance, including any modifications.

4.03 Access. The Department, its contractors and agents, shall have reasonable right-of-entry and access to the Property for inspection, monitoring, testing, sampling and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety or the environment and oversee any required activities, provided such access does not unreasonably interfere with either construction activities or the Owner's use of the Property.

ARTICLE V

ENFORCEMENT

5.01 Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department, by reason of this Covenant, to require the Owner or Occupant modify or remove any improvements ("Improvements" herein shall include, but are not limited to, all buildings, roads, driveways, and paved parking areas, etc.) constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant shall be grounds for the Department to file civil and/or criminal actions including nuisance or abatement against the Owner or Occupant as provided by law.

ARTICLE VI

VARIANCE, TERMINATION AND TERM

6.01 Variance. Any Owner or with the Owner's written consent, any Occupant of the Property may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Any Owner and/or any Occupant, with the Owner's written consent of the Property, or any portion thereof, may apply to the Department for a termination of the restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in exercising its discretion, this Covenant shall continue in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication of the Property or any portion thereof, to the general public or anyone else for any purpose whatsoever.

7.02 State of California References. All references to the State of California and the Department include successor agencies/departments or other successor entity(ies) and delegated agencies.

7.03 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Monterey within ten (10) days of the Covenantor's receipt of a fully executed original and prior to transfer of the Property from the Department of the Army to another Owner.

7.04 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor:

Director, Fort Ord Office, Army Base Realignment and Closure
P.O. Box 5008
Presidio of Monterey, California 93944-5008

To Department:

Chief, Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

To U.S. EPA:

Chief, Federal Facility and Site Cleanup Branch
Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, Mail Code: SFD-8-3
San Francisco, California 94105-3901

To Fort Ord Reuse Authority:

Executive Officer
Fort Ord Reuse Authority
100 12th Street, Bldg. 2880
Marina, California 93933

To Del Rey Oaks:

City Manager
City of Del Rey Oaks
650 Canyon Del Rey
Del Rey Oaks, California 93940

And to current owners and/or property manager, at addresses as provided by Del Rey Oaks.

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Partial Invalidity. If any portion of this Covenant is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

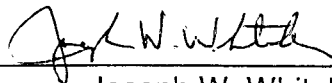
7.07 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.08 Statutory References. All statutory references include successor provisions.

7.09 Representative Authority. The undersigned representative of each party to this Covenant certifies he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

IN WITNESS WHEREOF, the COVENANTOR has caused this Covenant to be executed in its name by the Deputy Assistant Secretary of the Army for Installations and Housing and the Seal of the Department of the Army to be hereunto affixed this 2nd day of December, 2004. ~~2005~~

DEPARTMENT OF THE ARMY



Joseph W. Whitaker

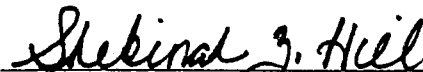
Deputy Assistant Secretary of the Army for Installations and Housing

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA)
)ss
COUNTY OF ARLINGTON)

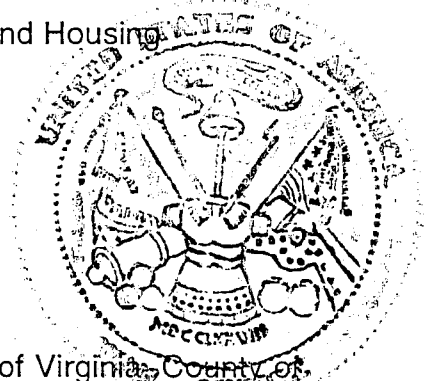
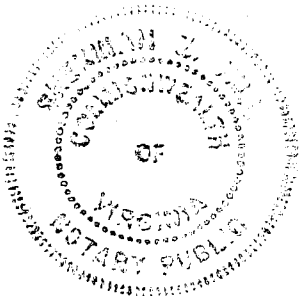
I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, whose commission as such expires on the 30th day of September, 2008, do hereby certify that on this day personally appeared before me in the said Commonwealth of Virginia, County of Arlington, Joseph W. Whitaker, Deputy Assistant Secretary of the Army for Installations and Housing, whose name is signed to the foregoing instrument and acknowledged the foregoing instrument to be his free act and deed, dated the 2nd day of December, 2004, and acknowledges the same for and on behalf of the UNITED STATES OF AMERICA.

Given under my hand this 2nd day of December, 2004. ~~2005~~



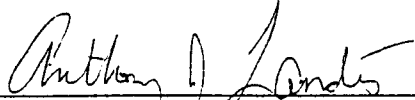
NOTARY PUBLIC

Embossed Hereon is My
Commonwealth of Virginia Notary Public Seal
My Commission Expires September 30, 2008
SHERINA Z. HILL



IN WITNESS WHEREOF, the DEPARTMENT OF TOXIC SUBSTANCES CONTROL,
STATE OF CALIFORNIA has caused these presents to be executed on this 9th day
of September, 2004.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL



Anthony J. Landis

Chief of Northern California Operations, Office of Military Facilities

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)ss
COUNTY OF SACRAMENTO)

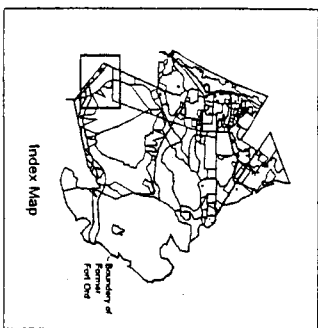
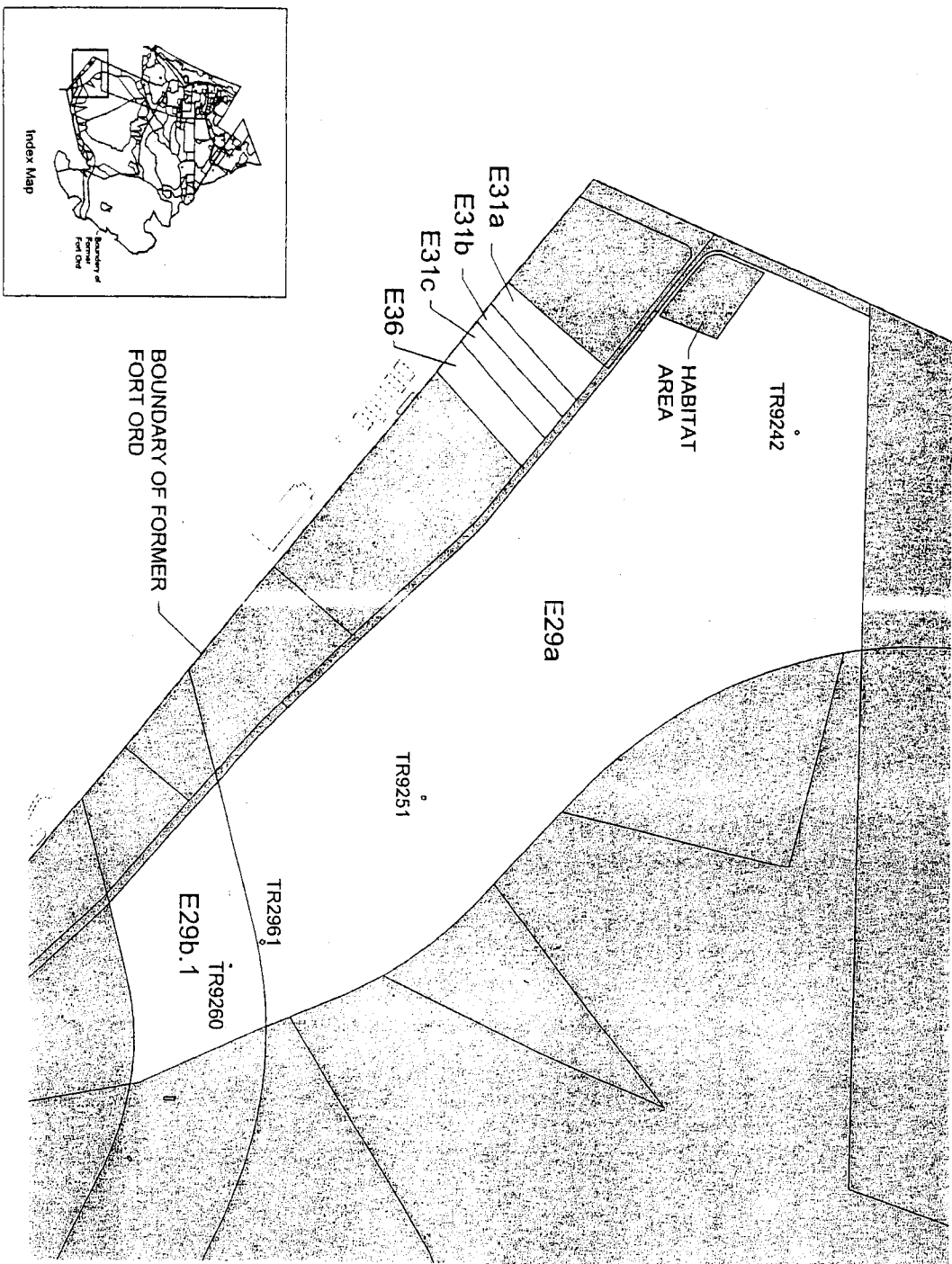
I, the undersigned, a Notary Public in and for the State of California, County of Sacramento, whose commission as such expires on the 26th day of October, 2005, do hereby certify that on this day personally appeared before me in the said State of California, County of Sacramento, Anthony J. Landis, Chief of Northern California Operations, Office of Military Facilities, whose name is signed to the foregoing document dated the 9th day of September, 2004, and acknowledges the same for and on behalf of the Department of Toxic Substances Control.

Given under my hand this 9th day of September, 2004.


NOTARY PUBLIC



EXHIBIT A



Parcel Boundaries shown are approximate and are not intended to represent a legal description of the property



Location Map
Del Rey Oaks FOSSET
Former Fort Ord
Monterey, California

DRAWN JCF
JOB NUMBER 52703 00134

APPROVED JCF

DATE 10/00

REVISED DATE 6/03

EXPLANATION

E36 Transfer Parcel with Number
Not Part of this Transfer

9351 Building with ID Number

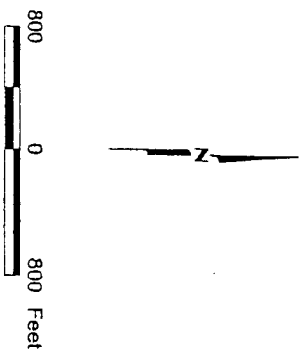


EXHIBIT B
H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

LEGAL DESCRIPTION

341.87 ACRE PARCEL OF LAND FOR ECONOMIC DEVELOPMENT
CONVEYANCE - "DEL REY OAKS"

PARCEL 1

All that real property situate in the City of Del Rey Oaks, County of Monterey, State of California described as follows:

All that land shown and designated as "Parcel 1" on that certain map entitled "Record of survey showing the boundary of a 341.87 acre parcel of land for economic development conveyance, Del Rey Oaks" filed for record in Volume 23 of "Surveys" at Page 103, on June 23, 2000, Records of Monterey County, California, said parcel being more particularly described as follows:

Beginning at the southwesterly corner of the Fort Ord Military Reservation, as said corner is shown on Page 5 of 31 of map filed for record in Volume 19 of "Surveys" at Page 1, Records of said county, being also in the northwesterly line of General Jim Moore Boulevard (North South Road) at the most westerly corner of Parcel 18 as said Parcel is shown and so designated upon map filed for record in Volume 20 of "Surveys" at Page 110, said point being herein designated as Point "A" for the purpose of further description; thence

South 50° 05' 20" East, 109.60 feet to the southeasterly line of General Jim Moore Boulevard; thence along said southeasterly line and boundaries of said Parcel 18,

North 23° 14' 55" East, 842.90 feet; thence

Easterly along the arc of a tangent circular curve, concave to the south, having a radius of 60 feet, through a central angle of 106° 04' 01", for an arc distance of 111.07 feet to the southwesterly line of South Boundary Road; thence tangentially along said southwesterly line,

South 50° 41' 04" East, 1041.25 feet; thence leaving said line and boundary of said Parcel 18,

South 39° 54' 40" West, 895.53 feet to boundary of said Fort Ord Military Reservation; thence along said boundary

South 50° 05' 20" East, 838.25 feet; thence leaving said Fort Ord Military Reservation boundary line

North 47° 26' 06" East, 913.35 feet to said southwesterly line of South Boundary Road and boundary of Parcel 18; thence along said southwesterly line, the following (6) courses

H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

South $50^{\circ} 41' 04''$ East, 342.61 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2370.00 feet, through a central angle of $8^{\circ} 24' 15''$, for an arc distance of 347.63 feet; thence tangentially

South $42^{\circ} 16' 49''$ East, 1710.55 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the northeast, having a radius of 3630.00 feet, through a central angle of $6^{\circ} 02' 20''$, for an arc distance of 382.60 feet; thence tangentially

South $48^{\circ} 19' 09''$ East, 1403.10 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2870.00 feet, through a central angle of $1^{\circ} 04' 31''$, for an arc distance of 53.86 feet; thence non-tangentially leaving said southwesterly line of South Boundary Road and boundary of said Parcel 18,

North $42^{\circ} 45' 22''$ East, 60.00 feet to a point on the northeasterly line of said South Boundary Road, said point also being the most westerly corner of Parcel "C", as said parcel is shown and so designated on the map filed for record in Volume 23 of "Surveys", at Page 26, Records of Monterey County, California, thence along the northwesterly boundaries ~~line~~ of said Parcel "C" with the following (2) courses,

North $76^{\circ} 00' 33$ East, 279.77 feet; thence

Easterly along the arc of a tangent circular curve, concave to the south, having a radius of 2518.61 feet, through a central angle of $24^{\circ} 30' 21''$, for an arc distance of 1077.23 feet to the northeasterly corner of said Parcel "C"; thence non-tangentially leaving the boundary of said Parcel "C"

North $21^{\circ} 57' 19''$ West, 1618.78 feet; thence

Northwesterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 3060.00 feet, through a central angle of $24^{\circ} 44' 56''$, for an arc distance of 1321.77 feet; thence tangentially

North $46^{\circ} 42' 15''$ West, 1055.75 feet; thence

H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

Northerly along the arc of a tangent circular curve, concave to the east, having a radius of 3310.00 feet, through a central angle of $39^{\circ} 08' 26''$, for an arc distance of 2261.17 feet; thence non-tangentially

North $88^{\circ} 47' 40''$ West, 2490.65 feet to a point on said boundary line of said Fort Ord Military Reservation being the most northerly corner of the before mentioned Parcel 18; thence along said line,

South $23^{\circ} 14' 55''$ West, 2153.41 feet to the point of beginning.

Containing a gross area of 341.87 acres of land, more or less.

Exception Parcel "A"

Excepting therefrom the following described parcel of land for roadway and utilities purposes, being a portion of "Parcel 18" as said parcel is shown and so designated upon map filed for record in Volume 20 of "Surveys", at Page 110, Records of said county, said portion being particularly described as follows:

Beginning at the hereinbefore described "Point A"; thence along the boundaries of said "Parcel 18" with the following (9) courses,

South $50^{\circ} 05' 20''$ East, 109.60 feet to the southeasterly line of General Jim Moore Boulevard (North South Road); thence along said southeasterly line

North $23^{\circ} 14' 55''$ East, 842.90 feet; thence

Easterly along the arc of a tangent circular curve, concave to the south, having a radius of 60 feet, through a central angle of $106^{\circ} 04' 01''$, for an arc distance of 111.07 feet to the southwesterly line of South Boundary Road; thence tangentially along said southwesterly line,

South $50^{\circ} 41' 04''$ East, 2341.75 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2370.00 feet, through a central angle of $8^{\circ} 24' 15''$, for an arc distance of 347.63 feet; thence tangentially

South $42^{\circ} 16' 49''$ East, 1710.55 feet; thence

Southeasterly along the arc of a tangent circular curve, concave to the northeast, having a radius of 3630.00 feet, through a central angle of $6^{\circ} 02' 20''$, for an arc distance of 382.60 feet; thence tangentially

South $48^{\circ} 19' 09''$ East, 1403.10 feet; thence

H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

Southeasterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2870.00 feet, through a central angle of $1^{\circ} 04' 31''$, for an arc distance of 53.86 feet; thence non-tangentially leaving said southwesterly line of said South Boundary Road and boundary of said "Parcel 18",

North $42^{\circ} 45' 22''$ East, 60 feet to a point on the northeasterly line of said South Boundary Road and boundaries of said Parcel 18; thence along the northeasterly line of South Boundary Road and boundaries of Parcel 18 with the following (7) courses,

Northwesterly along the arc of a non-tangent circular curve whose center of circle bears South $42^{\circ} 45' 22''$ West, 2930.00 feet distant, for an arc distance of 54.99 feet through a central angle of $1^{\circ} 04' 31''$; thence tangentially

North $48^{\circ} 19' 09''$ West, 1403.10 feet; thence

Northwesterly along the arc of a tangent circular curve, concave to the northeast, having a radius of 3570.00 feet, through a central angle of $6^{\circ} 02' 20''$, for an arc distance of 376.27 feet; thence tangentially

North $42^{\circ} 16' 49''$ West, 1710.55 feet; thence

Northwesterly along the arc of a tangent circular curve, concave to the southwest, having a radius of 2430.00 feet, through a central angle of $8^{\circ} 24' 15''$, for an arc distance of 356.44 feet; thence tangentially

North $50^{\circ} 41' 04''$ West, 1835.51 feet to a point on said northeasterly line of South Boundary Road, said point being designated as Point "B" for the purpose of further description; thence continuing along said line,

North $50^{\circ} 41' 04''$ West, 551.18 feet; thence leaving said line,

Northerly along the arc of a tangent circular curve, concave to the east, having a radius of 150 feet, through a central angle of $73^{\circ} 55' 59''$, for an arc distance of 193.56 feet to the southeasterly line of General Jim Moore Boulevard; thence tangentially along said line and boundaries of Parcel 18,

North $23^{\circ} 14' 55''$ East, 1115.53 feet; thence leaving said line of road and run across the northerly boundary of Parcel 18,

North $88^{\circ} 47' 40''$ West, 91.70 feet to the northwesterly boundary line of said Fort Ord Military Reservation and said Parcel 18; thence along said line,

South $23^{\circ} 14' 55''$ West, 2153.41 feet to the point of beginning.

Exception Parcel "A" contains 13.52 acres more or less

H. D. PETERS Co., Inc. and Associates

Engineering Surveying Planning

119 Central Ave.
P.O. Box 512
Salinas, CA 93901

Phone: (831) 424-3961
Fax: (831) 424-2746
E-mail: hdpeters@redshift.com

Exception Parcel "B"

Excepting also therefrom the following described parcel of land for habitat preserve purposes:

Beginning at the hereinbefore described "Point B"; thence

North 26° 00' 01" East, 293.93 feet; thence

North 45° 00' 00" West, 565.69 feet; thence

North 14° 52' 39" West, 90.78 feet, thence

South 84° 50' 03" West, 36.80 feet to the southeasterly line of General Jim Moore Boulevard;
thence along said line,

South 23° 14' 55" West, 271.56 feet; thence leaving said line,

Southerly along the arc of a tangent circular curve, concave to the east, having a radius of
150 feet, through a central angle of 73° 55' 59", for an arc distance of 193.56 feet to the
northerly line of South Boundary Road; thence tangentially along said line,

South 50° 41' 04" East, 551.18 feet to the Point of Beginning

Exception Parcel "B" contains 4.63 acres more or less

Leaving the before described Parcel 1 a net area of 323.72 acres, more or less

Prepared by:

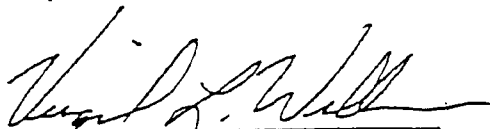

Virgil L. Williams, L.S. 3304



EXHIBIT C

AGREEMENT

Del Rey Oaks Former Fort Ord Resort Property

Del Rey Oaks, California

This Agreement is made and entered into, by and between the State Department of Toxic Substances Control ("Department"), the Fort Ord Reuse Authority ("FORA") and the City of Del Rey Oaks and the Redevelopment Agency of the City of Del Rey Oaks (collectively "Del Rey Oaks") pursuant to Health and Safety Code section 25355.5 (a)(1)(c).

1.0 Background

- 1.1 The former Fort Ord was selected for closure in 1991 in accordance with procedures of Public Law 101-510, the Base Realignment and Closure Act of 1990. The property is currently owned by the United States Army ("Army"), was part of the former Fort Ord, and is located in Del Rey Oaks, California, and consists of approximately 324 acres in six parcels identified by the Army as parcels: E29a, E29b.1, E31a, E31b, E31c, and E36 ("the Property"). The Property is also known as MRS-DRO.1, MRS-DRO.2, and a portion of MRS-43. A detailed map of the Property, including a site location map, is attached as Attachment 1.
- 1.2 Fort Ord was listed on the National Priorities List (Superfund) in 1990. The Fort Ord Federal Facility Agreement was signed by the Army, the United States Environmental Protection Agency, the Department and the California Regional Water Quality Control Board, Central Coast Region, in 1990. The entire Property is undergoing the federal Comprehensive Environmental Compensation and Liability Act ("CERCLA") remediation process, which will not be finished for some time. Because the Army intends to transfer this Property to FORA prior to the end of the CERCLA remediation process, and FORA and Del Rey Oaks have agreed to receive the Property under those conditions, such transfer must be pursuant to the CERCLA Section 120(h) (3) "early transfer process".
- 1.3 The Property was used extensively as a practice range area for training involving military munitions. From 1998 to 2003, the Army performed munitions response (MR) actions at the Property and munitions debris and munitions and explosives of concern (MEC, previously known as ordnance and explosives (OE)) items were found. The Property has now been "cleared" of MEC by the Army to its standard except for portions of parcels E29a and E29b.1 (within an "11 grid area" in the Range 26 berm area). The Army and the Department agree the potential exists that additional MEC items remain.

- 1.4 The Department understands that, while the Army believes it has completed MR actions on the property to be conveyed to Del Rey Oaks through FORA, the use of current technology does not assure that all MEC has been detected and removed. Additional remedial actions may remain to be performed on the Property. Due to residual uncertainty about any remaining MEC, the Army has committed that it will provide on-site construction support within the 11 grid Range 26 Berm Area, as described in section 2.2 below.
- 1.5 The Department, FORA and Del Rey Oaks understand at a future date, the Army, under the existing Federal Facilities Agreement, will prepare a Record of Decision (ROD) document to address any remaining remedial actions for the Property.
- 1.6 The Department, FORA, and Del Rey Oaks understand the Army, pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan, will continue to provide recurring Military Munitions Response Program reviews on the Property no less frequently than every 5 years.
- 1.7 The former Fort Ord is a Resource Conservation and Recovery Act (RCRA) 42 USC section 6901 et. seq. "Interim Status" facility.
- 1.8 FORA has been designated by the Army, pursuant to the Memorandum of Agreement Between the United States of America Acting By and Through the Secretary of the Army, United States Department of the Army and the Fort Ord Reuse Authority For the Sale of Portions of the former Fort Ord, California, dated the 20th day of June 2000, ("MOA") and MOA Amendment No. 1, dated the 23rd day of October 2001; which sets forth the specific terms and conditions of the sale of portions of the former Fort Ord located in Monterey County, California, pursuant to provisions of Federal law, as the recipient of the Property with the Property to be re-conveyed from FORA to Del Rey Oaks or directly to a developer designated by Del Rey Oaks under the provisions of an Implementation Agreement dated May 31, 2000 ("IA").
- 1.9 The Army and DTSC will enter into a Covenant to Restrict Use of Property (hereinafter "Covenant") prior to transfer of the Property to prohibit certain land uses on the Property, and require compliance with this Agreement.
- 1.10 Del Rey Oaks and FORA intend the Property will be conveyed to and developed by one or more developers in conformance with the Fort Ord Reuse Plan, as adopted by FORA on June 13, 1997. As part of the development process, Del Rey Oaks intends to require any developer, through a written agreement, to comply with the provisions of this Agreement as applicable. Notwithstanding any such agreement, Del Rey Oaks will be responsible to the Department for compliance with and enforcement of this Agreement.

- 1.11 This Agreement contemplates the Property will be transferred to FORA, and that FORA will transfer the Property to either Del Rey Oaks or a developer designated by Del Rey Oaks. As such, this Agreement specifically refers to Del Rey Oaks as the responsible party for compliance and enforcement of this Agreement. The Parties agree that if the transfer to Del Rey Oaks or a developer designated by Del Rey Oaks does not occur, FORA, DTSC and the new prospective property owner will enter into an agreement similar to this Agreement prior to land transfer. FORA remains bound to this Agreement until the new agreement is signed.

The parties agree as follows:

2.0 Implementation of This Agreement

- 2.0.1 Del Rey Oaks will implement this Agreement consisting of the following:

2.1 Construction Support and Military Munitions Education and Awareness

For soil disturbances (defined for the purposes of this paragraph 2.1 as any digging, site preparation, grading, drilling, rototilling, soil preparation, or similar activities), the following shall apply:

- 2.1.1 Del Rey Oaks, FORA and the Department understand the Army has committed to conduct, at its expense, construction worker military munitions recognition training, which is part of the Fort Ord Site Security Program dated April 2003 (Site Security Program). (See Attachment 2, Site Security Program, section 3.3.1.5). This training will include the warning to all workers performing soil disturbance that MEC items may be present and, because of this fact, appropriate care must be taken. The Army, pursuant to the Site Security Program, will also provide all new workers this training. This training is not required for hotel and resort employees, delivery persons, etc., who will have minimal potential for soil contact. If at any time the Army ceases to provide this training, Del Rey Oaks will provide equivalent training, as approved by the Department.
- 2.1.2 No soil disturbance or construction activity on the Property shall begin until the Army has provided the training described in section 2.1.1 above to all construction workers involved in soil disturbance and all other construction workers who will be working on the Property.
- 2.1.3 No soil will be removed from the Property without prior approval from the Department.
- 2.1.4 Any munitions debris found will be stockpiled and secured in one designated area. Upon notification to the Army by the Unexploded Ordnance (UXO) technician or Del Rey Oaks, the Army has agreed to dispose of this debris appropriately.

- 2.1.5 In the event any person finds an item suspected to be a potential MEC item during soil disturbance activity, Del Rey Oaks or its successor will stop work and evacuate all non-essential personnel within an appropriate area. Del Rey Oaks or its successor will immediately notify the Army, Del Rey Oaks Police Department, the Directorate of Law Enforcement at the Presidio of Monterey, the Department, and other personnel/agencies deemed appropriate. For found items, refer to Additional Activities and Reporting, section 2.4.
- 2.1.6 Federal law requires the Army will continue to be responsible for potential live OE items. In the event that an OE item is encountered on the Property which is suspected to be live, the Army will return to the Property, make the determination as to whether the item is live, and will render such items inert, treat them, or transport them to an appropriate location.
- 2.1.7 In the event the number or type of MEC items found on the Property indicates that additional MEC items may remain on the Property, the Department and/or Del Rey Oaks may request the Army return to perform an appropriate additional MR action.
- 2.1.8 In addition, for soil disturbance projects of 10 cubic yards or greater, Sections 2.1.8 - 2.1.8.7 shall apply (see note).

Note: Soil yardage is calculated for an entire project. Examples of projects that may be 10 cubic yards or greater include the initial golf course construction, as well as re-routing a pipeline or re-contouring a green. It is not the intent of this Agreement to require UXO construction support for routine, small, one-time soil disturbance events such as replacing broken sprinkler lines or planting shrubs. Sections 2.1.1 – 2.1.7 do apply to these small one-time soil disturbance events.

- 2.1.8.1 Construction Support will be provided as described herein. For this Agreement, "Construction Support" is generally defined as UXO expert(s) being on site, observing soil disturbance and using approved geophysical equipment to scan soil whenever possible, depending on safety considerations, grading and construction activity.
- 2.1.8.2 The objectives of Construction Support are to achieve a safe development, safe use of the property and to find any MEC or MEC related items that may remain on the property. These items are most likely to exist in the top three feet of existing soil.
- 2.1.8.3 The UXO expert(s) shall comply with Department of Defense (DoD) Explosive Safety Board Standard 6055.9, "DoD Ammunition and Explosive Safety Standards", July 1999 (DoD 6055.9), DoD 6055.9-STD, DoD Ammunition and Explosives Safety Standards and other appropriate rules.

- 2.1.8.4 The UXO expert(s) shall keep detailed records, including daily logs, of the grading, their work, and any MEC or MEC-like items found.
- 2.1.8.5 Del Rey Oaks shall submit a work plan or technical memorandum (Work Plan) as agreed by the Department, to the Department at least 30 days prior to the intended start of clearing and grading, in satisfaction of the requirements of Sections 2.1.1 through 2.1.8.4 inclusive, above. This Work Plan will include the grading plans for the project and a contractual and enforceable obligation by which developer will be required to comply with the Work Plan. DTSC will use its best efforts to review, accept with modification or reject the Work Plan within sixty (60) days of receipt.
- 2.1.8.6 Del Rey Oaks will implement the approved Work Plan.
- 2.1.8.7 Del Rey Oaks will give notice to the Army and the Department fourteen days prior to commencing soil disturbance activities on any portion of the Property. The notice to the Department will include the grading plan with a map designating areas for grading.

2.2 Soil Disturbance Activities in the Range 26 Berm Area

- 2.2.1 If Del Rey Oaks conducts any soil disturbance activities in the 11 grid Range 26 Berm Area identified in the OE-15DRO1-2 After Action Report dated August 2003, as shown on Attachment 3 and described in Attachment 4 ("Berm Area"), Del Rey Oaks will comply with 2.1.1 through 2.1.8.7 above, including the submission of a Work Plan, except as modified by this section 2.2.
- 2.2.2 Del Rey Oaks will provide construction support in compliance with Sections 2.1.8 through 2.1.8.7 from existing ground surface to four feet in depth below existing ground surface.
- 2.2.3 The Army has committed it will provide on-site construction support in the Berm Area. This construction support will be provided only during activities that disturb soil in the 11-grid Berm Area at depths greater than four feet below the current ground surface, down to either (1) original grade as determined by the Army, or (2) proposed new final grade and additional four feet. DTSC and Del Rey Oaks understand the construction support that the Army will provide will be consistent with the Final OE-15DRO.1-2 Site Specific Work Plan (sections 2.3.4 through 2.3.9).

2.3 Del Rey Oaks Ordinance Regarding Digging and Excavating on the Parcel

- 2.3.1 Del Rey Oaks adopted, on December 2, 2003, Ordinance No. 259, "An Ordinance Amending the Municipal Code to Add Chapter 15.48 Relating to Excavation on the Former Fort Ord" entitled "Digging and Excavation on the Former Fort Ord," to control and restrict excavation and movement of soil.

- 2.3.2 Del Rey Oaks will not make any substantive change to the Ordinance without prior notice to and approval by the Department. The Department will not unreasonably withhold approval. The City Council may, following 30 days' prior written notice to the Department and following a public hearing, revise the Ordinance upon a finding based on substantial evidence that the revision is required for the preservation of the public peace, health, safety or welfare. Notwithstanding the foregoing, Del Rey Oaks may not revise the Ordinance to change the requirement that it provide the Safety Alert to all Property Owners, nor will Del Rey Oaks revise the Ordinance to change the requirement that the permittee prepare and file an After Action Report in accordance with Exhibit B of the Ordinance.

2.4 Additional Activities and Reporting

- 2.4.1 Del Rey Oaks, its developers, or its successor will immediately notify the Army, Del Rey Oaks Police Department, the Directorate of Law Enforcement at the Presidio of Monterey and the Department if any MEC items or MEC-like items are found at any time. (See Attachment 5, Army MEC Incident Reporting Form). Within seven days of finding the MEC item, Del Rey Oaks will submit a completed Army MEC Incident Reporting Form to the Department.
- 2.4.2 Del Rey Oaks will give notice to the Army and the Department of any future grading or construction activities during the planning stages of these grading or construction activities.
- 2.4.3 The Department, Del Rey Oaks and FORA agree that additional fencing, which provides the same degree of protection as the existing fencing the Army has constructed surrounding the Former Fort Ord Impact Area ("Impact Area", formerly known as the Multi-Range Area or MRA), is required in order to protect workers, resort staff and guests. Del Rey Oaks will install the fencing between the Property and the Impact Area before construction is commenced and will continue to maintain the fence after the construction is completed. Del Rey Oaks will notify the Department upon completion of the fence. Del Rey Oaks may apply for a variance to this paragraph after the adjacent property in the Impact Area has been cleared.
- 2.4.4 Within 30 days after completion of activities involving 10 cubic yards or more of soil disturbance, Del Rey Oaks will submit an after action report to DTSC covering activities undertaken during the project. The after action report will include descriptions of grading and construction activities (including start and finish dates for these activities), any MEC or MEC related items discovered, the location and depth of MEC items discovered, and the specific compliance with each of the provisions of this Agreement. The final as-built drawings, including final grade elevations, will be included in the completion report. The daily logs kept by the MEC technicians, pursuant to Section 2.1.8.4 above, and submitted Army MEC Notification forms will also be submitted with these reports.

- 2.4.5 On February 1st, an annual letter report will be submitted discussing any new construction, grading, or excavation activity, any MEC or MEC-related items found, specific training efforts conducted during the previous calendar year and the specific compliance with each of the provisions of this agreement. Del Rey Oaks or its successor may apply for a variance requesting to decrease the frequency of the submittal of the letter reports. The daily logs kept by the UXO technicians, pursuant to section 2.1.8.4 above, and any previously submitted Army MEC Notification forms, will also be submitted with these reports. If the timing is appropriate, the annual letter report may be combined with an after action report, as described in section 2.4.4.
- 2.4.6 Each developer and subsequent owner will provide the report as set forth in Section 2.4.4 and 2.4.5 to Del Rey Oaks. Del Rey Oaks will review each report and provide a consolidated report to the Department. If the Department has concerns with the consolidated report, the Department will notify Del Rey Oaks, which shall resolve the matter.
- 2.4.7 The Department's activities will include; but not be limited to, review and comment on documents, travel to the Property, oversight of field work in fulfillment of this Agreement, meetings with FORA and Del Rey Oaks, and applicable travel and services by the Department's UXO contractor.

3.0 General Provisions

- 3.1 Whenever any person gives or serves any Notice (Notice as used herein includes any demand or other communication with respect to this Agreement), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Del Rey Oaks: City Manager
 City of Del Rey Oaks
 650 Canyon Del Rey
 Del Rey Oaks, California 93940

City Attorney
City of Del Rey Oaks
Robert R. Wellington
857 Cass Street, Suite D
Monterey, California 93940

And to current owners and/or property manager, at
addresses as provided by Del Rey Oaks

To Department: Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

To FORA: Executive Officer
Fort Ord Reuse Authority
100 12th Street
Marina, California 93933

- 3.2 Nothing herein shall prevent Del Rey Oaks, and it is specifically understood that Del Rey Oaks may, through a written agreement, assign some of the responsibilities (except reporting responsibilities, defined in Section 2.4) to the developer of the Property. Del Rey Oaks remains responsible for ensuring compliance with this Agreement.
- 3.3 Five-Year Review: Pursuant to the National Contingency Plan and the Federal Facilities Agreement ("FFA"), the Army will be performing all appropriate five-year reviews.
- 3.4 Obligations of the Department: The Department agrees to review and oversee the measures to be performed by Del Rey Oaks pursuant to this Agreement.
- 3.5 Project Coordinator: The Del Rey Oaks' Project Coordinator will be the Del Rey Oaks City Manager, who will be responsible for receiving and submitting all notices, comments, approvals, and other communications from and to the Department.

- 3.6 Submittals: All submittals, reports and notifications from Del Rey Oaks that are required by this Agreement will be sent to:

Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

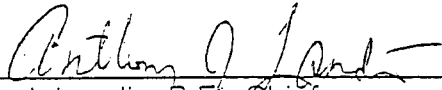
- 3.7 Communications: No informal advice, guidance, suggestions or comments by the Department regarding reports, plans, specifications, schedules or any other writings by Del Rey Oaks, will be construed to relieve Del Rey Oaks of the obligations to obtain such formal approvals as may be required.
- 3.8 Department Review and Approval: If the Department determines that any report, plan, schedule or other document submitted to the Department for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, the Department may: (1) modify the document as deemed necessary and approve the document as modified; or (2) return comments to Del Rey Oaks with recommended changes and a date by which Del Rey Oaks must submit to the Department a revised document incorporating the recommended changes. Any noncompliance with these directives shall be deemed a failure or refusal to comply with this Agreement.
- 3.9 Stop Work Order. In the event the Department determines that any activity during construction (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area, or to the environment, the Department may order Del Rey Oaks to stop further construction on the appropriate portion of the site for such period of time needed to abate the endangerment. A copy of any such order will be provided to Del Rey Oaks and the current owners and/or property manager at addresses as provided by Del Rey Oaks.
- 3.10 Compliance with Applicable Laws: Del Rey Oaks will carry out this Agreement in compliance with all applicable local, state, and federal requirements, including; but not limited to, requirements to obtain permits and assure worker safety.
- 3.11 Liabilities: Nothing in this Agreement will constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of current or future operations of Del Rey Oaks. Nothing in this Agreement is intended or will be construed to limit or preclude the Department from taking any action authorized by law to protect public health and safety or the environment, and recovering the cost thereof. Notwithstanding compliance with the terms of this Agreement, Del Rey Oaks may be required to take further actions as are necessary to protect public health and safety, and the environment.

- 3.12 Site Access: The Department will have reasonable right-of-entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Agreement as deemed necessary by the Department in order to protect the public health and safety or the environment, and oversee any required activities, provided such access does not unreasonably interfere with either construction activities or the Owner's use of the Property.
- 3.13 Record Retention: All data, reports and other documents required by this Agreement, will be preserved by Del Rey Oaks for a minimum of ten (10) years after the conclusion of all activities under this Agreement. If the Department requests some or all of these documents be preserved for a longer period of time, Del Rey Oaks will either comply with that request, or deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Del Rey Oaks will notify the Department in writing at least six (6) months prior to destroying any documents prepared pursuant to this Agreement.
- 3.14 State Liabilities: The State of California will not be liable for any injuries or damages to persons or property resulting from acts or omissions by Del Rey Oaks in carrying out activities pursuant to this Agreement, nor will the State of California be held as a party to any contract entered into by Del Rey Oaks or its agents in carrying out activities pursuant to this Agreement.
- 3.15 Severability: The requirements of this Agreement are severable, and Del Rey Oaks will comply with each and every provision hereof notwithstanding the effectiveness of any other provision.
- 3.16 Modification and Termination: Del Rey Oaks may, upon written request, seek modification or termination of this Agreement or the Covenant at any time. The Department will, under the appropriate circumstances, review and consider such request. In addition to modification as provided elsewhere in this Agreement, this Agreement may be modified or terminated by mutual written agreement of the parties at any time. The Department understands Del Rey Oaks may request that changes be made to this Agreement or the Covenant, based on the wishes of developers or lenders. The Department's intent is to work and cooperate with Del Rey Oaks to make such changes, when such changes are necessary and appropriate to implement the proposed development, and will continue to protect human health and the environment.
- 3.17 Parties Bound: This Agreement applies to and is binding upon Del Rey Oaks and its officers, directors, agents, employees, successors and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. Del Rey Oaks will provide a copy of this Agreement to any successor or assignee. If the transfer to Del Rey Oaks does not occur, FORA is the Party Bound, as set forth in paragraph 1.11.

- 3.18 Cost Recovery: Del Rey Oaks will be liable for all the Department's direct costs, as defined in H&SC Section 25269.1(b) and indirect costs, calculated pursuant to H&S 25269.3 and H&S 25269.4, for activities specifically attributable to Del Rey Oak's compliance with this Agreement. The Department will determine costs and bill Del Rey Oaks pursuant to the Department of Toxic Substances Control Summary of Cost Recovery Policies, August 7, 2003. If Del Rey Oaks causes additional contamination, cost recovery may also be pursued by the Department under CERCLA, Health and Safety Code Section 25360, or any other applicable state or federal statute or common law. The Department will invoice Del Rey Oaks for the Department's costs on a quarterly basis. Attached as Attachment 6, is an estimate of the Department's costs to be incurred under this Agreement. Note this is an estimate only and will likely not be the amount billed.
- 3.19 Effective Date: The effective date of this Agreement is the date of signature by the Department's authorized representative.
- 3.20 Representative Authority: Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement, and to execute and legally bind the parties to this Agreement.
- 3.21 Enforcement of Covenant: The Department and the Army will enter into a Covenant for the Property prior to transfer. The Covenant prohibits certain uses of the Property. Section 5.01 of the land use covenant provides the Department may require the land owner to remove certain improvements if made in violation of the covenant. The Department will give Del Rey Oaks a reasonable opportunity to cure any such violations prior to requiring modification or removal of improvements.

IN WITNESS WHEREOF, the Department, Del Rey Oaks and FORA, by their duly authorized representatives, have executed this Agreement on the dates set forth below at Del Rey Oaks, California.


DEPARTMENT OF TOXIC SUBSTANCES CONTROL



Anthony J. Landis, P.E., Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control

9-9-04
Date

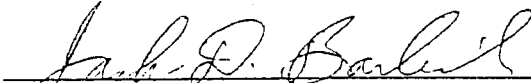
CITY OF DEL REY OAKS



Jack D. Barlich, Mayor

Date: August 23, 2004

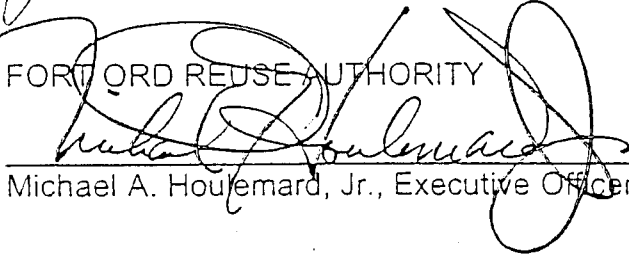
REDEVELOPMENT AGENCY OF
THE CITY OF DEL REY OAKS



Jack D. Barlich, Chair

Date: August 23, 2004

FORT ORD REUSE AUTHORITY



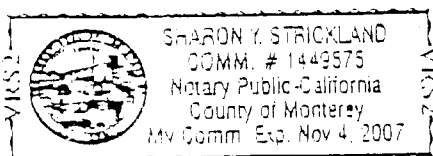
Michael A. Houlemard, Jr., Executive Officer

Date: August 23, 2004

STATE OF CALIFORNIA)
) ss
COUNTY OF MONTEREY)

On August 23rd, 2004 before me, a Notary Public in and for said state, personally appeared *Michael A. Houlemard, Jr. and Jack D. Barlich*, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument are the entities upon behalf of which the persons acted, executed the instrument.

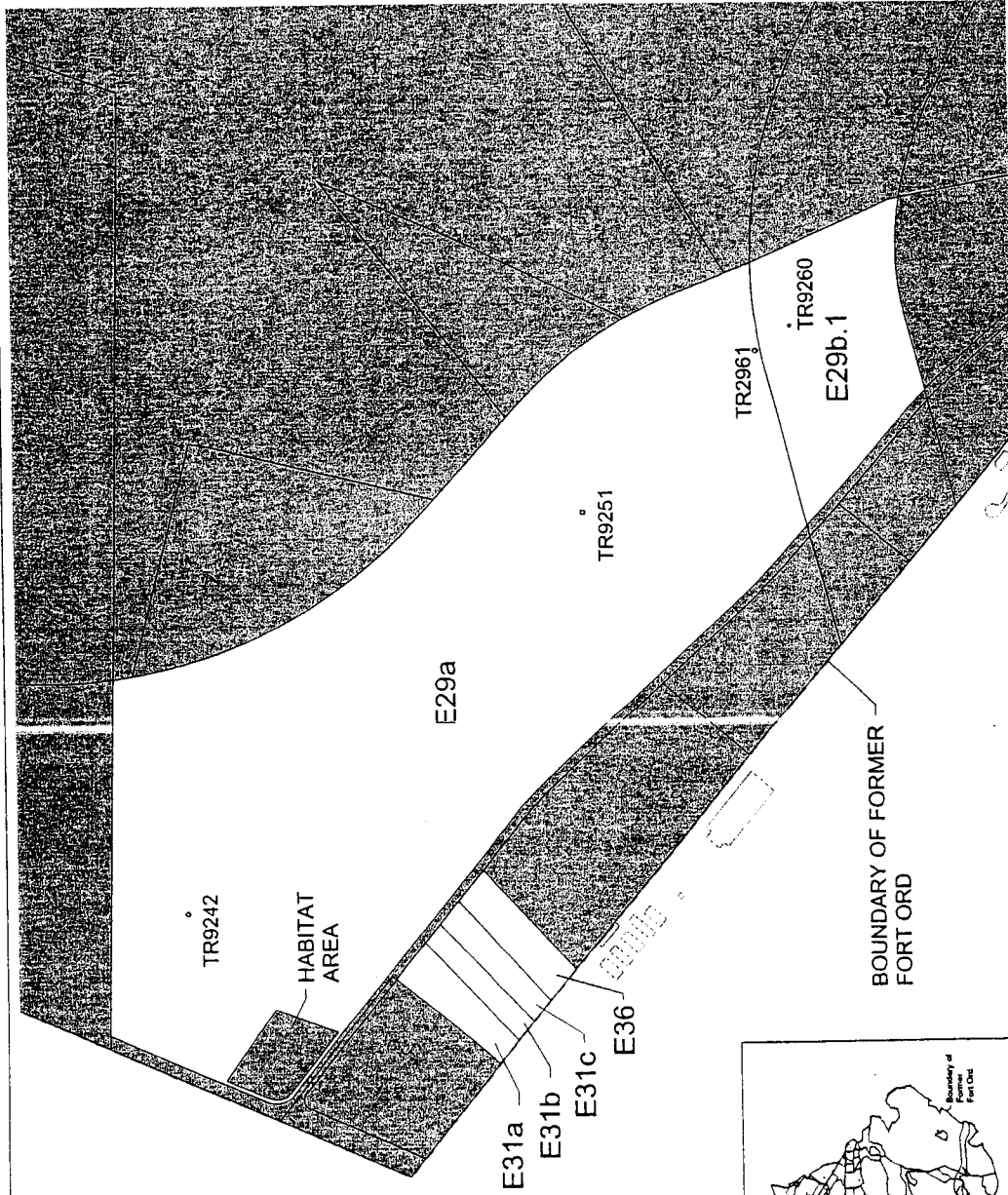
WITNESS my hand and official seal.





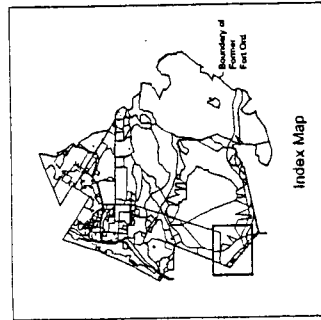
Notary Public, State of California

ATTACHMENT 1



EXPLANATION

- E36 Transfer Parcel with Number
- Not Part of this Transfer
- 9251 Building with ID Number



Index Map



Location Map
De Ray Oaks FOSSET
Former Fort Ord
Monterey, California

DRAWN BY JCF
JOB NUMBER 52703 00134

APPROVED *[Signature]*

DATE 10/00

REVISION DATE 6/03

PLATE 1

Parcel Boundaries shown are approximate and are not intended to represent a legal description of the property

Attachment 2

Excerpt from the Army's Site Security Program, April 2003 Regarding MEC Community Awareness and Training

3.3.1 Management Controls Management controls include education and community relations programs. Education/community relations programs are important in minimizing activities that might lead to an OE incident in two key ways:

- They inform the public of the danger of accessing OE sites, and therefore lessens OE exposures;
- They educate those who might encounter OE to not touch or otherwise disturb it, thereby reducing the possibility of accidental detonation.

3.3.2.1 Brochures, Pamphlets and Fact Sheets The most widely distributed brochure is entitled "Safety Alert". The Army's Community Relations Project Manager annually distributes this brochure to the following organizations:

- California State University Monterey Bay
- Department of Defense Center
- Rental managers of Bayview and Sunbay Properties
- Contractors
- Seaside and Marina Fire Departments
- Fort Ord Reuse Authority
- Housing Welcome Center (military families)
- Monterey County Office of Emergency Response and Preparedness Information
- Pacific Gas and Electric
- California Department of Parks and Recreation
- Marina Coast Water District
- Bureau of Land Management

In addition, the "Fort Ord News" is a quarterly publication that is mailed to 22,600 residents. Fifteen hundred copies are also hand delivered to schools and other institutions. This publication includes descriptions of ongoing cleanup activities and ordnance and explosive issues.

3.3.2.2 School Safety Program Since 1997, the former Fort Ord has had an Ordnance and Explosives School Safety Program. The objective of this program is to provide school age children with the ability to:

- Recognize the visible attributes of various OE items likely to exist on the former Fort Ord.

- Associate danger with OE items and Fort Ord OE areas.
- Understand the actions to be taken when a possible OE item is observed.

This program has a three-tiered approach that includes distribution of the "Safety Alert" to organizations and agencies who provide information to the local community, a one hour OE safety presentation for local elementary and middle schools for 5th, 6th and 7th grade students, and distribution of the "Safety Alert" to parents of children in the local schools and high school students. Coloring books are also available for the younger grades. The Army conducts the one-hour OE safety presentation. The presentation includes a 12-minute video entitled, "What's Going on Behind the Signs? Unexploded Ordnance Safety at Former Fort Ord." Table 2 displays the number of children that have been reached since 1997. Schools are sent letters in the fall (August/September) at the beginning of the school year, at the beginning of the calendar (January) year and then are contacted in April by telephone as a follow up.

Year	# Schools Invited	# Schools Participating	# Children Participating
1997-98	11	5	970
1998-99	11	4	1,023
1999-00	18	5	709
2000-2001	19	5	1,086
2001-2002	20	5	1,102

Table 2. School Safety Program

In addition, occasionally the Community Relations Project Manager is requested by various community groups to conduct presentations about the cleanup process. These presentations are utilized as opportunities to make the public aware of the ordnance and explosives risks. There are over 30 local organizations with addresses that are annually offered Ordnance and Explosives presentations.

3.3.2.3 Public Meetings "Safety Alert" brochures and the current publication of the "Fort Ord News" are made available at the Community Involvement Workshops. In addition, the Directorate of Environmental and Natural Resources Management has had an exhibit at the Monterey County Fair since 1994. "Safety Alert" brochures and displays on the cleanup are exhibited. From August 2000 to the present, refrigerator magnets have been distributed that have the phone number to call in the event of a discovery of OE. Exhibits are also displayed at the Bureau of Land Management Appreciation Day, California State University at Monterey Bay events, and Presidio of Monterey Safety Day and other events.

Town hall meetings (a forum similar to homeowner's association meetings) are conducted quarterly for the residents in military housing at the Ord Military Community. "Safety Alert" brochures are also distributed at town hall meetings.

Open Houses are conducted at least annually. Open Houses provide an opportunity for community members to talk to cleanup staff one on one about cleanup and to take tours of the areas where cleanup activities are ongoing or have been completed. The OE education board is on display and "Safety Alert" brochures and copies of the current publication of the "Fort Ord News" are also made available.

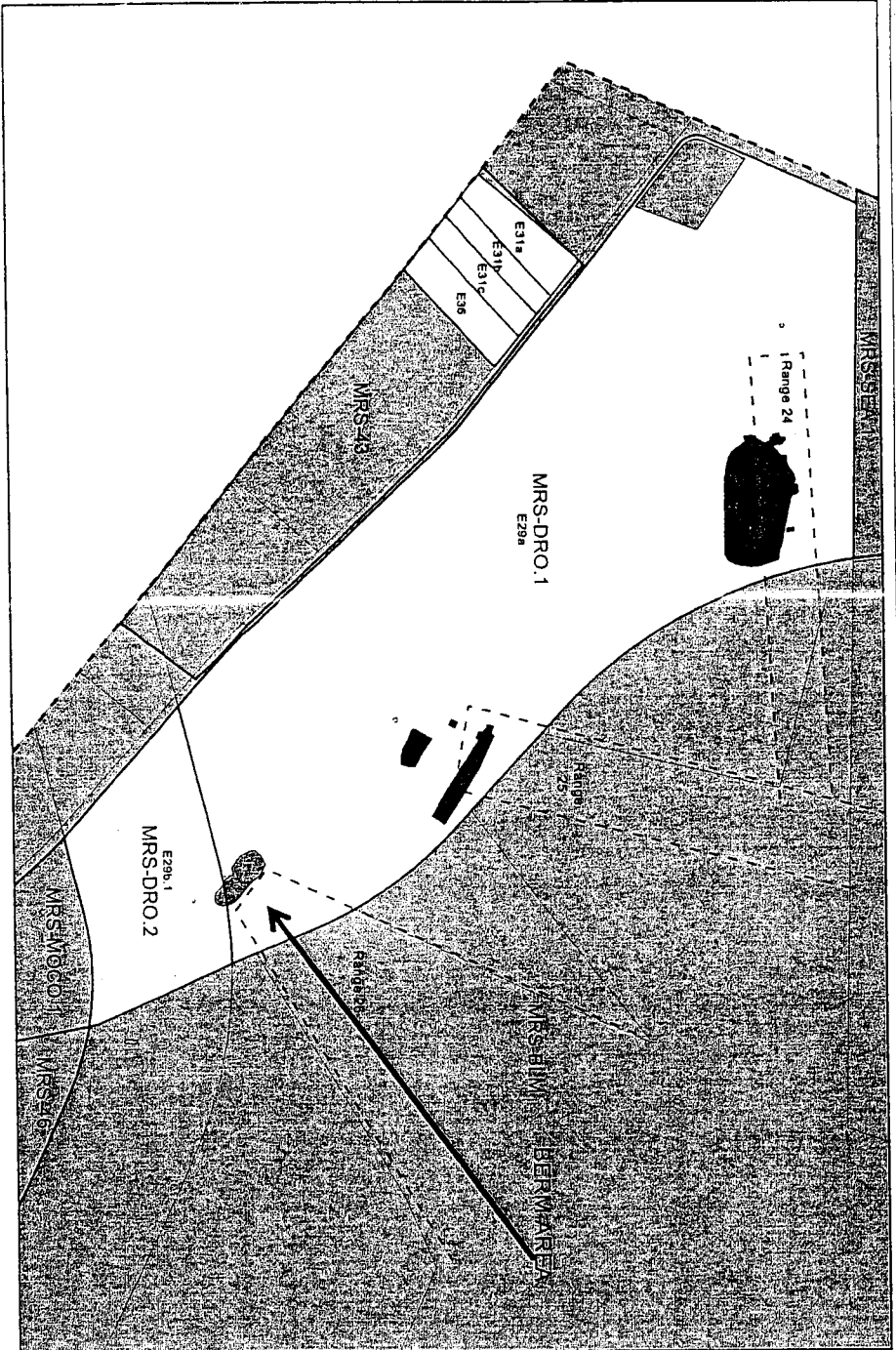
3.3.2.4 Display Boards The Bureau of Land Management (BLM) has kiosks and information boards that also display the "Safety Alert." Plate 1 provides a location map for kiosks and information boards. Information boards contain the same types of information. However, they are not enclosed like the kiosks and the information has been laminated to protect it from the weather. In addition, trail maps contain notification procedures if OE is found and information brochures which are distributed to visitors along with BLM trail maps.

3.3.2.5 OE Familiarization Training. The Army offers OE familiarization training to anyone digging holes or disturbing soil at the former Fort Ord and currently on property that has been transferred. The OE Safety Specialist conducts a thirty-minute training session. This training session includes a lecture on what OE might be found, the procedure to follow if something is found and "Safety Alert" brochures are also distributed. Staff from the following organizations have received familiarization training:

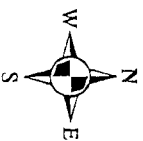
- CSUMB
- USACE Contractors
- Pacific Gas & Electric
- Pacific Bell
- BLM

To schedule this training, Mr. Lyle Shurtleff may be contacted at (831) 242-7924.

ATTACHMENT 3



- EXPLANATION**
- ☐ MRS Boundary
 - ☒ E36 Transfer Parcel With Number
 - ☐ Not Part Of This Transfer
 - ☐ Location Of Former
 - ☐ Filling Range
 - ☐ Limits Of Lead Removal
 - ☐ Excavation
 - ☐ Del Rey Oaks Group
 - ☐ Limits Of Range 26
 - ☐ Berm Excavation
 - ☐ Boundary Of Former Fort Ord



Parcel Boundaries shown are approximate and are not intended to represent a legal description of the property



MRS Locations
 Del Rey Oaks FOSET
 Former Fort Ord
 Monterey, California

PROJECT
 JCF 52703 00135

APPROVED
 P. E. T.

DATE
 5/04

2

LEGAL DESCRIPTION

Attachment 4

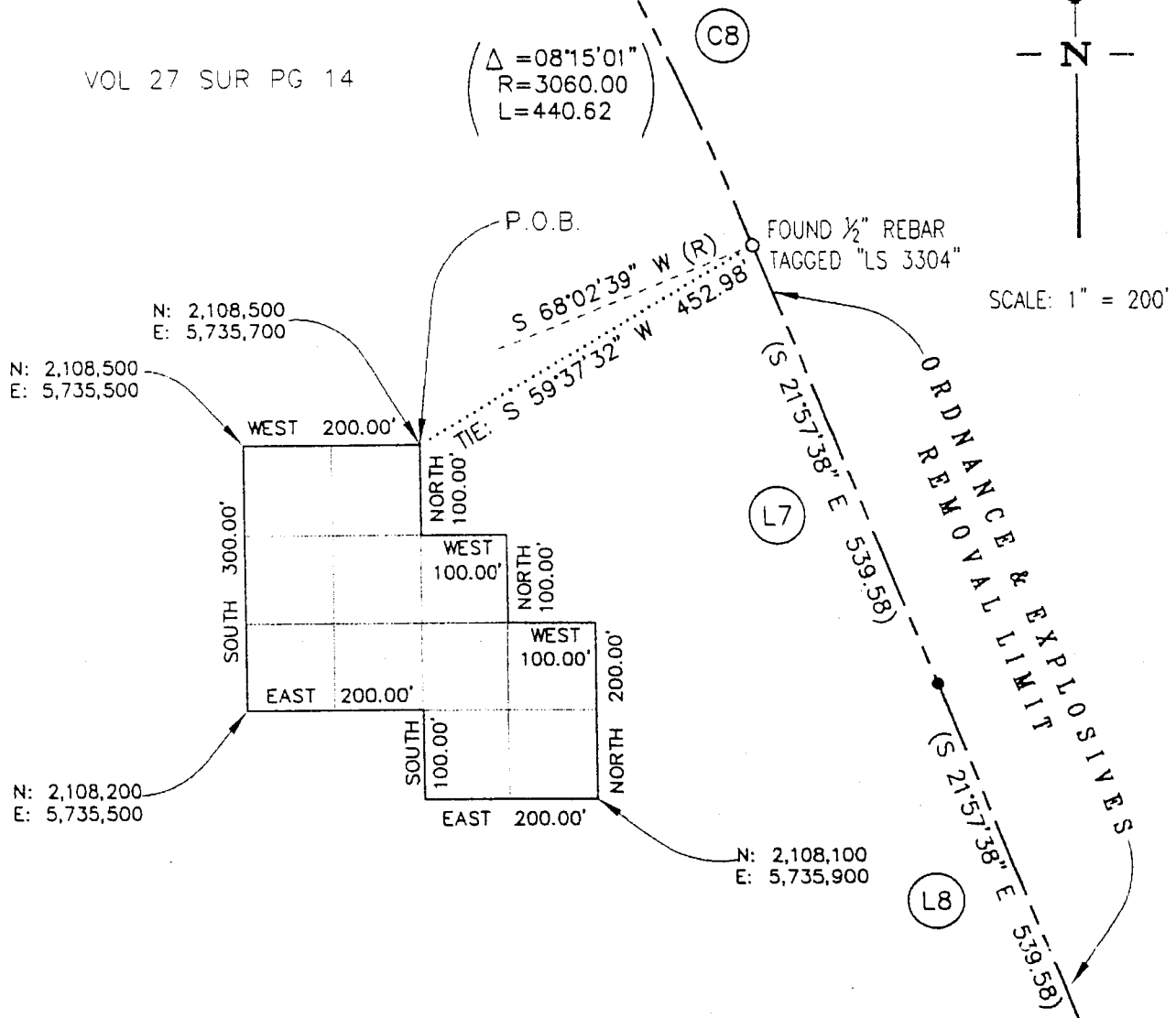
AREA REQUIRING ARMY CONSTRUCTION SUPPORT ELEVEN GRIDS IN THE RANGE 26 BERM AREA

Commencing at a point on the northeasterly parcel boundary, said point being a monument described as a ½" rebar tagged, "LS 3304" shown between courses "C8" and "L7", as said monument and courses are shown on that certain map entitled, "Ordnance & Explosives Removal Limits", filed for record on October 23, 2003, in Volume 27 of Surveys at Page 14, Records of Monterey County; thence from said Point of Commencement, departing said northeasterly parcel boundary, South 59°37'32" West, 452.98 feet to the True Point of Beginning, said point having State Plane Coordinates: Northing 2,108,500, Easting 5,735,700; thence

- 1) West, 200.00 feet to a point having State Plane Coordinates (Northing: 2,108,500, Easting: 5,735,500); thence
- 2) South, 300.00 feet to a point having State Plane Coordinates (Northing: 2,108,200, Easting: 5,735,500); thence
- 3) East, 200.00 feet; thence
- 4) South, 100.00 feet; thence
- 5) East, 200.00 feet to a point having State Plane Coordinates (Northing: 2,108,100, Easting: 5,735,900); thence
- 6) North, 200.00 feet; thence
- 7) West, 100.00 feet; thence
- 8) North, 100.00 feet; thence
- 9) West, 100.00 feet; thence
- 10) North, 100.00 feet to the True Point of Beginning.



VOL 27 SUR PG 14



KEY:

COORDINATES, STATE PLANE (TYP.) = N: 2,108,200
E: 5,735,500

ALL COORDINATES SHOWN ARE STATE PLANE,
CALIFORNIA ZONE 4



EXP 12/31/05

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION

AREA REQUIRING ARMY CONSTRUCTION SUPPORT
ELEVEN GRIDS IN THE RANGE 26 BERM AREA
BEING A PORTION OF THE PARCEL SHOWN ON
VOLUME 27, SURVEYS, PAGE 14

COUNTY OF MONTEREY

STATE OF CALIFORNIA

PREPARED FOR

The United States Army Corps of Engineers

BY

CENTRAL COAST SURVEYORS

5 HARRIS CT., SUITE N-11

MONTEREY, CALIFORNIA 93940

PHONE: 394-4930

SCALE

1" = 200'

DATE

MARCH 2004

MUNITIONS AND EXPLOSIVES OF CONCERN (MEC) INCIDENT REPORTING FORM

If you discover any object that resembles munitions or explosives, **report it immediately** to US Army Corps of Engineers (USACE) and Fort Ord Base Realignment and Closure Office, Munitions Response Program Manager.

A. PROVIDE THE FOLLOWING INFORMATION:

Name of Person Reporting:	Telephone:
Agency:	Fax:
Date & Time of Incident/Discovery: Item has been in place for a long time	
Description of Item Found (refer to the "Safety Alert pamphlet):	
Location (direction from nearest road/building, attach map):	
GPS Coordinate Location: (Type of Instrument, NAD83 California State Plan Coordinates Zone IV, feet)	
Describe how the item was found:	

CONTACT THE APPROPRIATE AGENCIES IMMEDIATELY:

Initial when completed	Action	Contact Number	Date & Time Called
	Monday – Thursday Fax this form to USACE OE Safety Specialist	Fax: (831) 884-9030 Phone: (831) 884-9925 ext.226/231 (Mon-Thu 0600 - 1600)	
	Friday – Sunday call 787 th EOD Company IMMEDIATELY	Phone: (650) 603-8301/02 (24 hours)	
	Note: If 787th EOD Company is notified, Contact Fort Ord BRAC, Munitions Response Manager Lyle Shurtleff (831) 242-7919, Cell (831) 760-2575.		

B. To be completed by USACE when applicable (Mon – Thu)

Form Received By:	Date & Time:
Identification of Item Found:	
Extent of Area Surveyed:	Name of digital file for picture (date):
Disposition of Item:	
Fax completed form to Lyle Shurtleff Bldg 4463 Gigling Rd, POM (Fort Ord) within 8 business hours	Fax: (831) 394-6816 Phone: (831) 242-7919 Cell: (831) 760-2575
Date & Time:	

C. To be completed by POM DENR:

Completed Form Received By:	Date & Time:
Regulatory Agencies Notified (Date):	

Department of Toxic Substances Control

COST ESTIMATE:

Del Rey Oaks

*Includes Direct and Indirect Cost Rates **

TITLE	Project Manager	Legal	Toxicology	HQ CEQA	Industrial Hygiene	Public Participation	Supervisor	Clerical
CLASSIFICATION	EG	Staff Counsel	Staff Toxicologist	AEP	AIH	PPS	SHSE	WPT
TASKS								
For Initial Construction of Golf Course and Hotel, or Other Large Soil Disturbance Projects:								
Work Plan Review	40						8	2
Site Visits	32							
After Action Report (AAR) Review	40						8	2
TOTAL HOURS/CLASS	112						16	4
Hourly Rate/Class	\$123	\$153	\$150	\$109	\$116	\$104	\$135	\$58
Total Estimated Costs/Class	\$13,776						\$2,160	\$232
DTSC Travel and Per Diem	\$360							
Consultant Work Plan Review/Comments	\$496							
Consultant Site Visit	\$7,137							
Consultant AAR Review/Comment	\$496							
Grand Total Costs for Initial Construction of Golf Course and Hotel, or Other Large Soil Disturbance Projects:	\$24,657							
For Smaller Soil Disturbances of More Than 10 Cubic Yards:								
Work Plan Review	8						4	1
Site Visit	16							
After Action Report Review	8						2	1
TOTAL HOURS/CLASS	32						6	2
Hourly Rate/Class	\$123	\$153	\$150	\$109	\$116	\$104	\$135	\$58
Total Estimated Costs/Class	\$3,936						\$810	\$116
Grand Total Costs for Smaller Soil Disturbances of More Than 10 Cubic Yards:	\$4,862							
Ongoing, Recurring Activities:								
Annual Letter Report Review	8						2	1
TOTAL HOURS/CLASS	8						2	1
Hourly Rate/Class	\$123	\$153	\$150	\$109	\$116	\$104	\$135	\$58
Total Estimated Costs/Class	\$984						\$270	\$58
Grand Total Annual Costs for Ongoing, Recurring Activities:	\$1,312							

* Indirect rate used for calculations = 174.75%

Exhibit D

ORDINANCE NO. 259

AN ORDINANCE AMENDING THE MUNICIPAL CODE TO ADD
CHAPTER 15.48 RELATING TO EXCAVATION ON THE FORMER FORT ORD

-o0o-

THE CITY COUNCIL OF THE CITY OF DEL REY OAKS DOES ORDAIN AS
FOLLOWS:

1. Chapter 15.48 added. Chapter 15.48, entitled "Digging and Excavation
on the Former Fort Ord" is hereby added to the Municipal Code to read in its entirety
as set forth on the attached six (6) pages, marked Exhibit "A" and incorporated herein
by this reference thereto.

2. Effective Date. This ordinance shall take effect and be in force thirty
(30) days from and after its final passage.

3. Posting of Ordinance. Within fifteen (15) days after the passage of this
ordinance, the City Clerk shall cause it to be posted in the three (3) public places
designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City
Council of the City of Del Rey Oaks duly held on November 18, 2003, and was passed
and adopted at an adjourned regular meeting duly held on December 2, 2003, by the
following vote:

AYES:	COUNCIL MEMBERS:	Russell, Buckley Smith, Edelen, Clark and Barlich
NOES:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS	None

WELLINGTON
LAW OFFICES
277 Oak Street
Suite D
Menlo Park, CA
94025
Telephone:
(415) 373-8733

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Jack D. Barlich
Jack D. Barlich, Mayor

ATTEST:

Ronald A. Langford
Ronald A. Langford, City Clerk

STATE OF CALIFORNIA
COUNTY OF MONTEREY } ss.
CITY OF DEL REY OAKS }

I, Stacy Tomasello, duly appointed City Clerk
of Del Rey Oaks, do hereby certify that the foregoing is a true and correct copy
of the original thereof on file in my office.

Stacy Tomasello
Deputy CITY CLERK

Chapter 15.48

Digging and Excavation on the Former Fort Ord

Sections:

15.48.010	Purpose and Intent
15.48.020	General.
15.48.030	Designation and Applicability.
15.48.040	Excavation and Digging Restrictions.
15.48.050	Permit Requirements.
15.48.060	Permit Procedure.
15.48.070	Term of Permit
15.48.080	Exceptions to Permit Conditions
15.48.090	Performance Bond.
15.48.100	Amendment to Permits.
15.48.110	Appeals.
15.48.120	Notification to Property Owners and Other Land Users
15.48.130	Revision of Chapter

15.48.010 Purpose and Intent. The United States Army ("Army") is in the process of transferring approximately 360 acres of the former Fort Ord military installation ("Fort Ord") to the City. Some parcels of the former Fort Ord were contaminated with ordnance and explosives ("OE"), which is a hazardous waste. The Army will not transfer those parcels until it has cleared those parcels of OE to its standard. Even following the Army's completion of OE response actions, it is possible that some OE materials may remain on those parcels. The California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") has statutory responsibility to oversee cleanup of releases of hazardous substances, which includes hazardous waste. DTSC cannot certify that all OE has been cleared and it requires a land use covenant to be recorded with the Monterey County Recorder on these parcels to provide additional controls and restrictions to protect the public health and safety and an agreement between the City and DTSC to provide additional safety measures, reporting, etc.

15.48.020 General. The City Council hereby finds and determines that those properties formerly included within the Fort Ord military installation which are suspected of containing OE require special standards and procedures for digging and excavation in addition to those contained in the Building Code, to ensure that:

A. Neither digging or excavation nor development of such properties occurs until ordnance or explosive remediation thereon is completed;

B. Potential purchasers or developers of sites which may contain OE and those persons whose work at such sites includes disturbing soil, are aware of the potential that OE may be located on these properties and are aware of the requirements for OE precautions prior to any digging, excavation or ground disturbance thereon; and

C. DTSC should be continuously involved in the establishment of

controls for those properties because it has statutory oversight responsibility with respect to hazardous substance response actions.

15.48.030 Designation and Applicability.

A. The City Council shall by resolution, and with the concurrence of DTSC, designate all real property within the City's land use jurisdiction which was formerly part of Fort Ord and which have been identified in the Archives Search Report and Supplement, dated 1997, or are otherwise identified, as the possible location of unexploded ordnance or explosives as an "Ordnance Remediation District" ("District"). All such Districts shall be depicted on a Grading District Map by an "ORD" suffix to indicate the existence of ordnance precaution remediation obligations on such property. The City shall notify DTSC of any change in the permitted land uses in any District within thirty (30) days after it adopts any change.

B. The regulations in this Chapter shall apply in all "ORD" districts and shall be in addition and subject to all provisions of the Municipal Code including Title 17 and the Building Code.

15.48.040 Excavation and Digging Restrictions. It shall be unlawful for any person, including utilities, to engage in any of the following activities on any property located within a District unless that person is acting pursuant to a valid permit issued pursuant to this Chapter: excavation, digging, development or ground disturbance of any type involving the displacement of 10 cubic yards or more of soil.

15.48.050 Permit Requirements. An owner or user of real property located within a District who desires to conduct the activities described in section 15.48.040 shall apply to the City Manager for a permit. The application shall be on a form approved by the City, shall be signed by the permit applicant, and shall contain the following information:

A. A description of any previous OE excavation or removal activity conducted other than by the Army on the property whose soil is proposed to be excavated, moved or graded.

B. A description of the property, whose soil is proposed to be excavated, moved or graded. The description shall include a drawing with dimensions to a scale which sets forth the size and details of all proposed excavation activity, including any proposed cut and fill, trenching, well drilling, mineral excavation, post hole drilling, or other activity of any sort whenever the applicant proposes to disturb 10 cubic yards or more of soil.

C. A statement that the person submitting the application acknowledges liability if the person removes any detected unexploded ordnance or otherwise violates this Chapter and/or the Permit. The Army will continue to have the liability to remove any ordnance items found. The person submitting the application is responsible to follow the procedures for notification of DTSC and the Army upon finding an ordnance item set out in section 15.48.060 below.

D. A statement by the person submitting the application that s/he has, within the preceding twelve months, delivered a copy of the Safety Alert required by section 15.48.120 to everyone whose work at the Property described in "B" above includes disturbing soil.

E. Any other information which the City Manager may require as pertinent to the determination of the adequacy of the proposed plan.

F. Payment of the Permit fee, as established by the City Council, at the time of filing the application for the Permit.

15.48.060 Permit Procedure.

The City Manager shall review the permit application and shall approve the permit unless evidence is available which indicates that the proposed grading or excavation will create an undue risk to the health and safety of the public at large. Prior to acting on any such application, the City Manager, in his/her sole discretion, may set and conduct a public hearing for the purpose of receiving comments on the proposed grading and excavation. Any permit issued hereunder shall be subject to the following conditions:

A. All excavation and grading shall be performed solely in accordance with the permit approved by the City and in accordance with the Permit as issued by the City.

B. Prior to movement of any soil on any property located within a District, the Permittee or designee shall personally deliver to each person who intends to work on the property described in the permit the Safety Alert, and explain to each such person the information set forth in that Notice.

C. The Permittee may not move or disturb unless the Permittee is in compliance with the requirements placed on the property by the Agreement, Del Rey Oaks Former Fort Ord Resort Property executed between the City and DTSC, dated ____, 2003 ("DTSC Agreement"). Said requirements shall be attached to and become a part of any permit issued pursuant to this Chapter.

D. The Permittee shall cease soil disturbance activities upon discovery of any suspected unexploded ordnance. The Permittee shall notify the Del Rey Oaks Police Department, the Directorate of Law Enforcement at the Presidio of Monterey, the Army and DTSC of any suspected unexploded ordnance discovered during any excavation or soil removal immediately upon discovery. The Permittee shall coordinate appropriate response actions with the Army and DTSC.

E. No later than thirty (30) days following the completion of the permitted soil disturbance activity, the Permittee shall prepare and file with the City Manager, the Army and DTSC an After Action Report that shall state whether and where OE was detected and the extent and depth of OE response actions undertaken and completed on the property that is the subject of the permit. (See Exhibit B). The After Action Report shall include site maps to illustrate the information contained in the report. All After Action reports prepared and filed in accordance with this Chapter shall be deemed public records.

F. The Permittee agrees as a condition of issuance of a permit to defend at its sole expense, indemnify and hold harmless from any liability the City, and reimburse the City for any expenses incurred resulting from or in connection with the approval of the project including any claim, suit or legal proceeding. The City may, at its sole discretion, participate in the defense of any such action, but such participation shall not relieve the Permittee of its obligations under this paragraph.

15.48.070 Term of permit. The permit shall be valid for one year from the date it is issued.

15.48.080 Exceptions to Permit Conditions. Following consultation with and approval by DTSC, the City Council may, upon a finding that the requirements of section 15.48.060.C are no longer necessary, designate by resolution any District as a "Limited Control District." The holder of any permit issued for any Limited Control District shall not be subject to section 15.48.060.C.

15.48.090 Performance Bond.

Upon a finding by the City Manager that a permit should issue for excavation or grading on the proposed site, the City Manager may require that a surety bond, lien or other security guarantee conditioned upon the faithful performance and completion of the permitted excavation activity be filed with the City. Such surety shall be executed in favor of the City and shall be maintained in an amount prescribed by the City Manager sufficient to ensure the completion of the excavation of the site as prescribed in the approved permit.

15.48.100 Amendment to Permits.

Request for amendments to an approved excavation permit may be submitted to the City Manager at any time, detailing proposed changes from the original permit. Deviations from the original permit shall not be undertaken until such amendment has been approved by the City in writing. Amendments to an approved permit shall be approved by the same procedure as prescribed for the approval of the original excavation permit.

15.48.110 Appeals.

Any person aggrieved by any determination of the City Manager in exercise of the authority granted herein shall have the right to appeal to the City Council. Any appeal setting forth the contested decision and the reasons for contesting same must be filed within ten (10) working days after the posting of the City Manager's decision at the three places designated by the City Council. The City Council shall render its decision within sixty (60) days following the filing of the notice of appeal. The Council may affirm, reverse or modify the decision of the City Manager. The Council action shall be final upon issuance of its decision.

15.48.120 Notification to Property Owners and Other Land Users.

A. The City will notify the owners of property designated as Ordinance Remediation Districts and those utilities known to be providing service within the City, of the requirements of this Chapter and provide those persons with the Safety Alert – Ordinance and explosives at Former Fort Ord ("Safety Alert"), which is attached hereto as Exhibit "A". The City shall annually notify the owners of said property as shown on the equalized tax rolls of the requirements of this Chapter and provide those persons with a copy of the Notice. Failure of any owner, occupant or user of such land to receive said notification shall not relieve that person from responsibility for compliance with this Chapter.

B. All owners, occupants or users of land subject to this Chapter, including utilities, shall notify any subsequent owners, assigns, lessees or users of such land of the requirements of this Chapter. Notification shall be made prior to transfer of the property in question. As used in this Chapter, the words "occupants" and "users" do not include customers, guests or other individuals who will have minimal potential for significantly disturbing the soil.

C. All persons identified in "A" above shall deliver, at least annually, a copy of the Safety Alert to everyone whose work at OE sites includes disturbing soil and shall explain the contents thereof to those persons.

15.48 130 Revision of Chapter. This Chapter shall not be revised without prior written notice to the DTSC and subject to the terms of the DTSC Agreement.

EXHIBIT A

SAFETY ALERT

Ordnance and Explosives at former Fort Ord

If you discover any object that resembles those shown
inside this brochure

DO NOT TOUCH IT!

Instead, **MARK THE LOCATION**, and
CALL THE FEDERAL POLICE

at (831) 242-7851 or 242-7852 to report what you've found.

ALERTA DE SEGURIDAD

Material de artillería y explosivos en el antiguo Fort Ord

Si descubre cualquier objeto que se asemeje a los
que se muestran en este folleto

¡NO LO TOQUE!

En su lugar, **MARQUE LA UBICACIÓN**, y
LLAME A LA POLICÍA FEDERAL

al (831) 242-7851 ó 242-7852 para reportar lo que encontró.

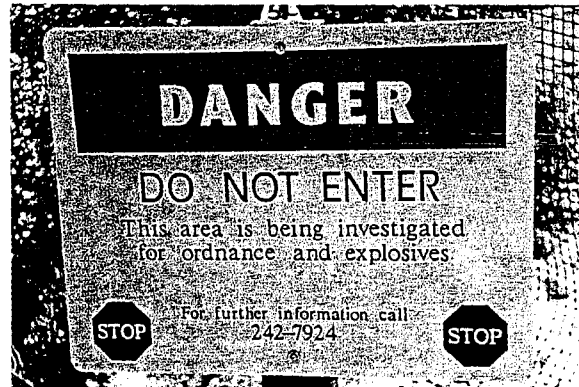


DANGER

Areas where unexploded ordnance may be present are posted with DANGER signs. Do not enter areas where you see signs like the ones below. Off-road vehicular traffic is prohibited on the former Fort Ord.

PELIGRO

Las zonas donde podría estar presente material de artillería que aún no ha explotado están marcadas con letreros de PELIGRO. No entre en zonas donde vea letreros como los que se muestran abajo. El tráfico automotor fuera de la vía principal está prohibido en el antiguo Fort Ord.



If you have questions regarding the ordnance and explosives cleanup at the former Fort Ord, please contact:

Si tiene preguntas relacionadas con los armamentos y la erradicación de explosivos en el antiguo Fort Ord, por favor póngase en contacto con:

Directorate of Environmental and Natural Resources
Management at the Presidio of Monterey **(831) 242-7924**

Exhibit B
City Of Del Rey Oaks
OE Construction Support After Action Report Form

1. Date _____
2. Date Soil Disturbance occurred _____
3. Were OE items or items suspected to be OE items found during the period of excavation?

No _____ If no, please skip to #__ below.

Yes _____ Please continue, and complete Part A of the Attached Ordnance and Explosives Incident Reporting Form and deliver to the Presidio of Monterey Police Department.

4. Describe the OE items and suspected OE items below. If necessary, attach additional sheet.

Description of item found. Include whether the item was live, or whether the item was suspected OE, and proven not to be.	Depth below original ground surface at which the item was found.	GPS coordinated of the item

5. Attach a site map with GPS coordinates describing items listed in #4 above.
6. Describe the final disposition of the items found.
7. By my signature below, certify that the above information is true.

_____ (Signed and dated by the UXO technician)

HISTORY

As an active U.S. Army post, Fort Ord's mission was to train soldiers to protect the interests of the United States. An important part of the mission was infantry and artillery training. As a result of this training, unexploded ordnance remains on portions of the now-closed Fort Ord.

After reviewing the records of past training activities, the Army identified areas where ordnance may still remain and began conducting investigations and removing ordnance from those areas. Cleanup of all identified areas will not be completed for many years.

If you find an object (or even a piece of one) that resembles those shown in the photograph —

Don't Touch It

Mark the Location

Call the Federal Police

at (831) 242-7851 or 242-7852

Si descubre cualquier objeto que se asemeje a los que se muestran en este fotografía —

¡NO LO TOQUE!

MARQUE LA UBICACIÓN

LLAME A LA POLICÍA FEDERAL

al (831) 242-7851 ó 242-7852.



75mm Projectile



40mm Projectile



MK2 Hand Grenade



M18 Smoke Grenade



M67 Hand Grenade



37mm Projectile



M127 Slap Flare



Rifle Smoke Grenade



M1 Firing Device



Electric Firing Device



Grenade Fuse



Bouncing Anti-Personnel Mine



Claymore Mine



Mine Fuse



Firing Device



3.5" Rocket



60mm Mortar



3" Anti-Tank Rifle Grenade



25mm Sub Cal for 81mm Mortar



81mm Mortar



2.36" Rocket

Fact Sheet
April
2003

FACT SHEET

Recorded Land Use Covenants (Assembly Bill 2436) and Regulations



*DTSC is one of six
Boards and
Departments within
the California
Environmental
Protection Agency.
The Department's
mission is to restore,
protect and enhance
the environment,
to ensure public health,
environmental
quality and
economic vitality,
by regulating
hazardous waste,
conducting and
overseeing
cleanups, and
developing
and promoting
pollution prevention.*

State of California



California
Environmental
Protection Agency



BACKGROUND

Utilizing land use covenants is one of the methods that the Department of Toxic Substances Control (DTSC) uses to protect the public from unsafe exposures to residual contamination that is left in place upon closure of a hazardous waste disposal facility, as part of either a short or long-term stabilization action, a corrective action, or a planned removal or remedial action. The term "land use covenants," as used in this fact sheet includes: written instruments and agreements restricting land uses, easements, servitudes, and land use restrictions. Recorded land use restrictions (or covenants) are provisions set forth in a document which can specify requirements on real property and affect the title, which is the evidence of ownership, to property. Land use covenants are recorded at the county recorder's office so that they will be found during a title search of the property deed. Land use covenants entered into or required by DTSC "run with the land," i.e., are binding on current and subsequent property owners, and remain in effect until they are formally removed or modified, pursuant to Health and Safety Code sections 25233, 25234, and 25398.7.

Previously enacted legislation, Assembly Bill (AB) 871 (Chapter 430, Stats. 1998) required DTSC to maintain a list of all land use covenants recorded pursuant to Health and Safety Code sections 25200, 25200.10, 25202.5, 25222.1, 25229, 25230, 25355.5, and 25398.7. At a minimum, this list must provide the street address, or if a street address is not available, an equivalent description for a rural location or the latitude and longitude of each property. DTSC is also required to update the list as new land use covenants are recorded, make the list available to the public, upon request, and shall place the list on DTSC's Internet website. The list, and a fact sheet describing AB 871, is available on DTSC's website at: www.dtsc.ca.gov/Mandated_Postings.html#deed.

RECORDED LAND USE COVENANTS POSTED ON DTSC'S WEBSITE

DTSC's Recorded Land Use Covenants List To Be Expanded

AB 2436 (Chapter 592, Stats. 2002), effective January 1, 2003, directs DTSC to include within its list of recorded land use covenants (and also includes land use

*(This fact sheet updates the December 2002 version: Recorded Land Use Covenants)
The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demands and cut your energy costs, see our website at www.dtsc.ca.gov*

covenants recorded pursuant to Civil Code section 1471) all of the following:
1) a description of the location for each property that includes the address and assessor's parcel number, or if a street address or assessor's parcel number is not available, the list must include a description of the location or the location's geographic coordinates; 2) a description of any restricted uses of the property and any contaminants known to be present; and 3) any remediation, if known, that would be required to allow for its unrestricted use. The bill also allows for the posting of the entire land use covenant document in lieu of providing the latter two descriptions.

In addition to providing the required listing of covenants, DTSC is posting the entire land use covenant document on its Internet website. The requirements of AB 2436 are prospective, effective after January 1, 2003; however, DTSC has placed on the website any current and previously recorded land use covenants that it has entered into under the listed statutory authorities.

New Requirements For County Recorder's Offices

Pursuant to AB 2436, county recorders are authorized to send a copy of any land use covenant, recorded pursuant to Civil Code section 1471, to Cal/EPA for posting on its Internet website, unless the recorded land use covenant is entered into with either DTSC, California Integrated Waste Management Board, State Water Resource Control Board, or a Regional Water Quality Control Board. County recorders have immunity from liability if they do not send the land use covenant to Cal/EPA, and are permitted to assess a reasonable fee to cover the costs associated with sending land use covenants to Cal/EPA. A recorded land use covenant imposed due to the presence of a hazardous material must remain with the property when it is sold or otherwise transferred, unless the land use covenant states otherwise.

DTSC'S LAND USE COVENANT REGULATIONS

DTSC has adopted regulations to add section 67391.1 to title 22, division 4.5, chapter 39, California Code of Regulations. These regulations apply only to DTSC and specify that a land use covenant imposing appropriate limitations on land use shall be executed and recorded when hazardous materials, hazardous wastes or constituents, or hazardous substances will remain at the property at levels which are not suitable for unrestricted use of the land. The regulations require DTSC to clearly set forth and define land use limitations or covenants in a remedy selection or response action decision document prior to approving or concurring with a facility closure, corrective action, remedial or removal action, or other response actions undertaken pursuant to chapter 6.5, 6.8, or 6.85 of division 20 of the Health and Safety Code, or article 1 of chapter 1, part 10.5 of the Education Code when contamination will remain at the property at levels which are unsuitable for unrestricted use of the land.

Additionally, the regulations delineate various circumstances under which DTSC will or will not make decisions related to land use covenants. The final (approved) regulations and a fact sheet describing these regulations will soon be accessible on DTSC's homepage at: www.dtsc.ca.gov/LawsRegulationsPolicies/index.html.

AVAILABILITY

For more information regarding land use restrictions and land use covenant agreements, please see DTSC's fact sheets entitled "Land Use Covenant Agreements In California," and "Recorded Land Use Restrictions (AB 871)," as well as DTSC's Official Policy and Procedure #87-14 entitled "Development and Implementation of Land Use Covenants (1990)," which includes a revised Model Deed Restriction Document dated August 7, 1998. In addition, Management Memo #EO-02-002-MM entitled "Response Actions for Sites Where Future Use May Include Sensitive Uses" are on DTSC's website. These documents are available by connecting to DTSC's home page at: www.dtsc.ca.gov/SiteCleanup/index.html. You may also obtain a copy of DTSC's Site Mitigation and Brownfields Reuse Program's list of recorded land use covenants by contacting the office listed below.

Department of Toxic Substances Control
Site Mitigation and Brownfields Reuse Program
Planning and Policy Unit
P.O. Box 806
Sacramento, CA 95812-0806
(916) 327-4258